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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Walker

Serial No.: 09/939,239

Filed: August 24, 2001

) Art Unit: 3763
)
) Examiner: Desanto
)
) 001/017 (1-3) USA
)
) January 10, 2009
) 750 B STREET, Suite 3120
) San Diego, CA 92101
)PETITION TO STRIKE PRIOR TO TRANSFER OF JURISDICTION TO THE BOARDCommissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

Fee: The Commissioner is authorized to charge deposit account no. 501167 \$400 for the petition fee under Rules 17(f) and 182; Petitioner requests that the fee be refunded upon a decision favorable to Petitioner.

The paper dated January 7, 2009 ("the paper") responding to the Reply Brief is unauthorized. Accordingly, Petitioner requests that it, along with the prior such paper improperly explicating on the prior Reply Brief be stricken from the file.

As mandated by 37 C.F.R. §41.43, there are only two types of responses permitted to a Reply Brief beyond mere acknowledgement - withdrawing the rejections or filing a Supplemental Examiner's Answer, see also MPEP §§1207.05 and 1208. The paper is neither, not being characterized or formatted as a "Supplemental Examiner's Answer" or bearing the requisite Technology Center Director permission for a Supplemental Examiner's Answer. Instead, the paper is an *ultra vires* mini-essay that is entitled to no weight

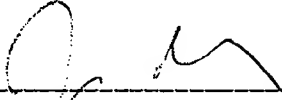
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or consideration, being beyond the scope permitted by Patent Office rules, and for this reason should be stricken from the record.

Respectfully submitted,



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JLR:jg

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